IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR

BENCH, JAIPUR.

**

J U D G M E N T

Bhala Ram Vs. State of Raj.

**D.B. CRIMINAL APPEAL NO.1079/01
AGAINST THE JUDGMENT DATED
12.9.01 PASSED BY ADDL. SESSIONS
JUDGE, KEKRI (AJMER) IN SESSIONS
CASE NO.4/99.**

Date of Judgment : January 09th,2006.

P R E S E N T

HON'BLE MR.JUSTICE SHIV KUMAR SHARMA

HON'BLE DR.JUSTICE VINEET KOTHARI

Mr. Kamlendra Sihag ,for the petitioner.
Mr. Brahmanand Sandu, PP, for the State.

BY THE COURT: (PER HON'BLE KOTHARI,J.)

This appeal is directed against the Judgment of learned Additional Sessions Judge, Kekri (Ajmer) dated 12.9.2001 convicting the appellant Bhala Ram for offence under Secs. 302, 376 and 379 IPC, and imposing sentence to undergo life imprisonment and a fine of Rs. 1000/- for offence under Sec. 302 IPC, 7 years rigorous imprisonment and a fine of Rs. 2000/- for offence under Sec. 376 IPC, and one year simple imprisonment & fine of Rs. 500/- for offence under Sec.379 IPC.

According to the First Information Report lodged at Police Station-Bhinai (Ajmer),by Suresh Chand Sharma S/o Radha Kishan, on 2.9.98 that his Bhabhi Smt. Pushpa Devi wife of Om Prakash went to the agriculture field to cut the grass and bring it home, but she did not return home by evening and at about 8.00 PM in the night, complainant Suresh Chand along with Ramesh and some other persons went on their agriculture field where maize was grown. They found the dead body of Smt.Pushpa and around here neck, they found a round of her own saree, and it appears that somebody after committing rape with her, has murdered her. On the said First Information Report, the police undertook the investigation and framed charges under Secs. 302, 376, 447 and 379 IPC against the appellant Bhala Ram. During the course of investigation, as many as 27 prosecution witnesses were examined, and 26 prosecution documents were exhibited before the trial court as against five defence witnesses produced on the defence side. According to the post-mortem report Ex.P-16 dated 3.9.98, in the opinion of the doctors, the cause of death of deceased Pushpa occurred on account of respiratory failure due to asphyxia caused by strangulation. The injuries found on the body parts are described under the said post-mortem report, which are as under:

"Multiple small abrasions each measuring about 5 mm x 1 mm present on mons pubis legit majora and inner side of upper part of both thighs. Pubic hairs are dark black in colour and matted at some places. They are cut and packed sealed and sent to chemical examiner. Linear streaks of blood stains present on both side of lateral aspect of labia majoras. Both vulva and pereneous centused vaginal discharges against undertaken...(illegible). Parlous size non pregnant uterus advexa normal.

Injuries

A. Antemortem: 1. Linear small abrasion measuring 5 mm x 1 mm on Rt upper eye lid.

2.Small abrasion measuring 5mm x5mm near root of the nose.

B. Postmortem: 1. Abrasion 1"x1"x3" below the umbilicus on anterior abdominal

2.Abrasion 1"x1" medial aspect wall of Rt. knee

3.Abrasion 2"x1" medial surface of Rt.foot.

Injury report relating to appellant Bhala Ram is Ex.P-24. The prosecution has sought to establish his case mostly on the basis of circumstantial evidence as there is no eye witness available in the present case.

According to PW-1 Suresh Chand Sharma, brother-in-law of deceased Pushpa, on the date of incident i.e. 2.9.98, when all the family members had gone to attend some family function of his sister at village Dhaal, only deceased Pushpa, her son Sunil and daughter Usha were at home, and when they reached home back at around 8.00 PM in the evening, then Sunil informed him that his mother

had gone in the after-noon in the agriculture field for collecting the “Chara” and had not returned back by that time, then the said PW-1 Suresh Chand along with his elder brother Ramesh and other persons of village i.e. Tej Singh, Kalyan Singh, Shiv Raj Tiwari, Laxmi Narayan Joshi etc. went to the agriculture field with torch, to find out deceased Pushpa. After sometime of search, they found the dead body of deceased Pushpa with a round of her saree around her neck and even her feet were bleeding, and blood was also coming out from her private parts and she was already dead. Thereupon, they went to the police station Bhinai, and report Ex.P-1 was lodged by him.

PW-7 Shetan Singh has stated in his statement recorded on 27.10.99 that he along with one Laxmi Narayan had come from Vijay Nagar to Padanga during the day, and at about 3.30 PM, appellant Bhala Ram was in the agriculture field of deceased Pushpa as he was coming out of the said agriculture field with his Dhoti in his hands. He has also stated in his cross-examination that this information he gave to 5-7 persons of the village including Suresh, Kalyan Singh, Ramesh Tiwari and Tej Singh. However, he did not give this information in the statement given to the police. PW-9 Smt. Geeta Devi wife of Chandra Prakash in her statement recorded by learned

trial court has stated that at about 2.00 PM, deceased Pushpa met her when she came to her agriculture field and then she asked her for her help to put bundle of Chara cut by her on her head, which she did and Pushpa told her that she may go, and she will come after getting some maize from her fields. On the same day, at about 4.00 PM when said witness again came to her field, she did not find Pushpa at the agriculture field, and in the nearby field near a village, the appellant Bhala Ram was with his goats who were grazing the field , and one Dayala was also with his cows grazing the same field. She called out the name of Pushpa, but she did not get any response. Thereupon she thought that Pushpa might have gone home and thus she also came with her Rajka. PW-10 Dayal has also stated in his statement that on the date of incident, appellant Bhala Ram had met him and he said that he is bringing some Bhuttas from nearby fields, and thereafter he went to the field of Badri Maharaj and after sometime he came back with maize (Bhuttas) and gave one to him and two Bhuttas to other two girls also.

PW-17, Kumari Sumitra D/o Lala Ram, aged 9 years, has stated before the court that she along with her sister Sugna had gone for grazing her buffaloes in the field near Pulia where the appellant Bhala Ram also came with his goats, who were grazing in the same field where

Dayala also came with his cows. The appellant Bhala Ram had give maize to both the sisters also. However, she did not know that from where he got those maize (Bhuttas).

Thus from the statements of various prosecution witnesses, it can be fairly gathered that appellant Bhala Ram was of course available at the site where the said incident of rape and murder is said to have taken place, but it is a matter of serious doubt as to whether the said appellant Bhala Ram, after committing the said heineous crime of rape and murder, would still remain in the agriculture fields with his goats which is clearly borne-out from the statements of various prosecution witnesses as narrated above. It is against normal human conduct that a person after committing such a crime would remain there on the spot for such a long period.

Besides this dent in the case of prosecution, the injury report Ex.P-24 of appellant , who is said to be about 25 years' of age, also shows that there were bruises on the upper part of his penis. The deceased Pushpa is stated to be around 35 years' of age. This kind of injury is also improbable in the course of sexual intercourse of two persons of this age group.

About the circumstantial evidence, the law is well

settled that unless the chain of circumstantial evidence is so established in an unbroken manner by the prosecution that no link is found to be missing in the said chain of circumstantial evidence, the accused cannot be convicted merely on the basis of such circumstantial evidence and offence cannot be said to have been proved beyond reasonable doubt by the accused and he cannot be punished. The Hon'ble Supreme Court in the State of U.P. Vs. Hari Mohan (2000) 8 SCC,598 propounded that where the evidence against the accused, particularly when he is charged with a grave offence like murder consists of only circumstances, it must be qualitatively such that on every reasonable hypothesis the conclusion must be that the accused is guilty: not fantastic possibilities nor freak inferences but rational deductions which reasonable minds make from the probative force of facts and circumstances.

When the case is based on circumstantial evidence, the following three tests should be satisfied:-

(i)the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(ii)those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;

(iii)the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the

conclusion that within all human probability the crime was committed by the accused and none else.

This court in its Judgment dated 16.11.2005 in State of Rajasthan Vs. Gopal and Gopal Vs. State of Rajasthan (DB Cr.Death Reference No.2/05 and DB Cr.Jail Appeal No.846/05) held as under:

> **"The standard of proof required to convict a person on circumstantial evidence is now well established by a series of decision of the Hon'ble Supreme Court. According to that standard of circumstances relied upon in support of the conviction must be fully established and the chain of evidence furnished by those circumstances must be so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused. The circumstances from which the conclusion of the guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused and should not be capable of being explained by any other hypothesis, except the guilt of the accused and when all the circumstances cumulatively**

taken together should lead to the only irresistible conclusion that the accused alone is the perpetrator of the crime."

Thus, in view of aforesaid position of law, there is no doubt that burden of prosecution in the cases depending on circumstantial evidence is much greater and no missing link or even a weak link giving rise to doubt in the mind of court can be fatal for the prosecution.

Viewed from this angle, from the perusal of record of the present case, and the statements of various prosecution witnesses, it appears to be improbable to us that the appellant Bhala Ram might have committed the said crime of rape and murder of Smt.Pushpa, and in our considered view, the prosecution has failed to establish all the circumstantial evidence in the form of unbroken chain of evidence, and therefore, in the circumstances of the case, the appellant deserves to be given benefit of doubt in the present case. His mere presence in the agriculture field of deceased Smt.Pushpa, and giving of maize (Bhuttas) to 2-3 persons, is not sufficient to convict him for the alleged offence under Secs. 302, 376 and 379 IPC, and his presence even after the incident in the nearby fields casts serious doubt on his involvement in the said crime. Therefore, this court is of the view

that the present appeal deserves to be allowed and the impugned Judgment of learned Addl. Sessions Judge, Kekri (Ajmer) convicting the said appellant under Sec. 302, 376 and 379 IPC deserves to be set aside.

For these reasons, we allow the appeal of the appellant and set aside the impugned judgment. We acquit the appellant of the charges under Section 302, 376 and 379 IPC. Appellant Bhala Ram, who is in jail, shall be set at liberty forthwith if not required to be detained in any other case.

(DR.VINEET KOTHARI),J. **(SHIV KUMAR SHARMA),J.**

s.rawat/-